

## **§ 99.22**

- (6) Regulate the course of the hearing and conduct of counsel therein;
  - (7) Examine witnesses;
  - (8) Receive, rule on, exclude or limit evidence or discovery;
  - (9) Fix the time for filing motions, petitions, briefs, or other items in matters pending;
  - (10) If the presiding officer is the Assistant Secretary, make a final decision;
  - (11) If the presiding officer is not the Assistant Secretary, certify the entire record including the recommended findings and proposed decision to the Assistant Secretary; and
  - (12) Take any action authorized by the rules in this part or in conformance with the provisions of 5 U.S.C. 551 through 559.
- (b) The presiding officer does not have authority to compel by subpoena the production of witnesses, papers, or other evidence.

## **§ 99.22 Rights of parties.**

All parties may:

- (a) Appear by counsel or other authorized representative, in all hearing proceedings;
- (b) Participate in any prehearing conference held by the presiding officer;
- (c) Agree to stipulations as to facts which will be made a part of the record;
- (d) Make opening statements at the hearing;
- (e) Present relevant evidence on the issues at the hearing;
- (f) Present witnesses who then must be available for cross-examination by all other parties;
- (g) Present oral arguments at the hearing; and
- (h) Submit written briefs, proposed findings of fact, and proposed conclusions of law, after the hearing.

## **§ 99.23 Discovery.**

The Department, the Lead Agency, and any individuals or groups recognized as parties shall have the right to conduct discovery (including depositions) against opposing parties. Rules 26-37 of the Federal Rules of Civil Procedure shall apply to such proceedings; there will be no fixed rule of priority of discovery. Upon written motion, the

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presiding officer shall promptly rule upon any objection to such discovery action initiated pursuant to this section. The presiding officer shall also have the power to grant a protective order or relief to any party against whom discovery is sought and to restrict or control discovery so as to prevent undue delay in the conduct of the hearing. Upon the failure of any party to make discovery, the presiding officer may, at the presiding officer's discretion, issue any order and impose any sanction (other than contempt orders) authorized by rule 37 of the Federal Rules of Civil Procedure.

## **§ 99.24 Evidentiary purpose.**

The purpose of the hearing is to receive factual evidence and expert opinion testimony related to the issues in the proceeding. Argument will not be received in evidence; rather, it should be presented in statements, memoranda, or briefs, as determined by the presiding officer. Brief opening statements, which shall be limited to statement of the party's position and what the party intends to prove, may be made at hearings.

## **§ 99.25 Evidence.**

(a) Testimony. Testimony shall be given orally under oath or affirmation by witnesses at the hearing. Witnesses shall be available at the hearing for cross-examination by all parties.

(b) Stipulations and exhibits. Two or more parties may agree to stipulations of fact. Such stipulations, or any exhibit proposed by any party, shall be exchanged at the prehearing conference or otherwise prior to the hearing if the presiding officer so requires.

(c) Rules of evidence. Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the presiding officer. A witness may be cross-examined on any matter material to the proceeding without regard to the scope of direct examination. The presiding officer may